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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/710,690

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Chris Carmichael

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EXAMINER

MALONE, STEVEN J

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/710,690	<b>Applicant(s)</b> CARMICHAEL ET AL.	
	<b>Examiner</b> STEVEN J. MALONE	<b>Art Unit</b> 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 4, 2008 has been entered.

### ***Response to Amendment***

2. This communication is a first Office Action rejection on the merits responsive to the amendment and arguments filed by applicant on June 4, 2008. Claims 1-20 have been cancelled. New claims 21-36 are pending and have been considered below.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**4. Claims 21-23 and 25-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Rothman et al. (2002/0072984).**

**As per claims 21 and 34**, Rothman et al. teaches a method, comprising:  
receiving an order over the Internet at a server, via a web- based interface, said order received from a consumer, said order specifying at least one product to be purchased (See the Abstract, via purchasing products over the Internet);

receiving payment information from said consumer over the Internet (See [0039], via a third party payment server);

based on said receiving said order and said payment, determining one of a plurality of different order fulfillment locations to send said at least one product to said consumer (See the Abstract, via based on information supplied by the buyer a local retailer is selected to ship the purchased product);

sending contents from said order, from said one of said order fulfillment locations based on said determining, to the consumer, using a shipping method (See the Abstract, via based on information supplied by the buyer, selecting a local retailer to ship the purchased product);

subsequent to said sending, allowing the consumer to return the contents from said order to a local retailer, different than said server and different from said one of said order fulfillment locations, and

responsive to said consumer returning said contents, refunding the payment received as part of said payment information (See [0047], via returning a product ordered online to a local retailer and receiving a refund for the return).

**As per claim 22,** Rothman et al. teaches maintaining an inventory management system that determines for said plurality of fulfillment locations, amounts of inventory maintained at least at a plurality of said fulfillment locations (See the Abstract, via local retailers providing inventory information to the online commerce store).

**As per claim 23,** Rothman et al. teaches wherein said determining comprises determining an order fulfillment location to send said product which is physically closest to said consumer (See [0075], order fulfillment by a local retailer based on address information).

**As per claim 25,** Rothman et al. teaches storing information indicative of inventory at local retailers, and also storing information indicative of other local retailers, and using said information to select one of said retailers to send said products, and using said refund of said item to increase an indication of a number of items stored at said retailer (See [0047], via a local retailer keeping the returned product for resale).  
As per claims 26 and 35, Rothman et al. teaches order fulfillment locations have different names than a name associated with said server which receives said order, and wherein said order fulfillment location receives said name associated with said server (See the Abstract, via a branded product sold through a local retailer having a branded name associated the online store/ online product).

**As per claims 27 and 36,** Rothman et al. teaches rebranding the order at the order fulfillment location using said name associated with said server (See Figure 13, via a “hearts on fire diamond” sold online and shipped from a local retailer).

**As per claim 28,** Rothman et al. teaches informing the order fulfillment location when the consumer returns a product (The customer informs the fulfillment location of a return by presenting the return to the fulfillment location).

**As per claim 29,** Rothman et al. teaches analyzing orders to determine product trends based on geographic territory (See [0045], sales are tracked for commission and compensation purposes for each distributor or employee of a distributor).

**As per claim 30,** Rothman et al. teaches analyzing orders to determine product trends based on demographics (See [0045], sales are tracked for commission and compensation purposes for each distributor or employee of a distributor).

**As per claim 31,** Rothman et al. teaches a method, comprising:  
receiving an order over the Internet at a server, via a web- based interface, said order received from a consumer, said order specifying at least one product to be purchased (See the Abstract, via purchasing products over the Internet);

receiving payment information from said consumer over the Internet (See [0039], via a third party payment server);

based on said receiving said order and said payment, determining one of a plurality of different order fulfillment locations to send said at least one product to said consumer, wherein said order fulfillment locations have different names than a name associated with said server which receives said order, and wherein said order fulfillment

location receives said name associated with said server (See the Abstract, via based on information supplied by the buyer a local retailer is selected to ship the purchased product);

rebranding the order at the order fulfillment location using said name associated with said server (See Figure 13, via a “hearts on fire diamond” sold online and shipped from a local retailer);

sending contents from said order to the consumer, from said one of said order fulfillment locations based on said determining, and including said rebranding, using a shipping method, said sending being to said consumer (See the Abstract, via based on information supplied by the buyer a local retailer is selected to ship the purchased product).

**As per claim 32**, Rothman et al. teaches subsequent to said sending, allowing the consumer to return the contents from said order to a local retailer different than said server and different from said one of said order fulfillment locations, and responsive to said consumer returning said contents, refunding the payment received as part of said payment information (See [0047], via returning a product ordered online to a local retailer and receiving a refund for the return).

**As per claim 33**, Rothman et al. teaches maintaining an inventory management system that determines for said plurality of fulfillment locations, amounts of inventory maintained at least at a plurality of said fulfillment locations (See the Abstract, via local retailers providing inventory information to the online commerce store).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothman et al. (2002/0072984) in view of Borders et al. (2007/0174144).**

**As per claim 24,** Rothman et al. discloses all elements of the claimed invention, but fails to explicitly disclose wherein said determining comprises determining an order fulfillment location to send said product which is within a specified mailing time to said consumer.

Borders et al. discloses online store product availability including: wherein said determining comprises determining an order fulfillment location to send said product which is within a specified mailing time to said consumer (See [0041], via customers scheduling a specific date and time for delivery of a product through the online store).

From this disclosure of Borders et al. it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify the online store system of Rothman et al. to include allowing the customer to schedule an delivery date and time in order to facilitate delivery of customer orders when a customer is home (See [0041] of Borders et al.).



***Response to Arguments***

7. Applicant's arguments with respect to claims 21-36 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Siegel (7,376,572) teaches return centers with rules-based dispositioning of merchandise.

Chelliah et al. (5,710,887) teaches a computer system and method for electronic commerce.

Cupps et al. (5,991,739) teaches an Internet online order method and apparatus.

Wong (6,115,690) teaches an integrated business-to-business web commerce automation system.

Kargman et al. (20020038261) teaches a system for placing orders through the internet to a selected store of a chain of stores.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. MALONE whose telephone number is (571)270-5107. The examiner can normally be reached on Monday-Thursday 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew S Gart/  
Supervisory Patent Examiner, Art  
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